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**IN THE
COURT OF APPEALS OF INDIANA**

JIMMIE CAMPBELL,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 48A02-0605-CR-438
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0501-FD-35

April 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Jimmie Campbell (“Campbell”) appeals his convictions for Dealing in Marijuana, as a Class D felony,¹ Possession of Marijuana as a Class D felony,² and being found a Habitual Substance Offender.³ We affirm.

Issues

Campbell raises two issues, which we restate as:

- I. Whether Campbell’s trial counsel was ineffective by failing to file a motion to suppress and object to the admission of certain evidence; and
- II. Whether the trial court erred in admitting Campbell’s statements regarding the ownership of the marijuana.

Facts and Procedural History

On January 19, 2005, Detective Kevin Earley (“Detective Earley”), a member of the Madison County Drug Task Force, received a telephone call concerning Campbell’s possible whereabouts. Detective Earley was acquainted with Campbell through several prior encounters with him in the community. Accompanied by Detective Stephen Blackwell (“Blackwell”), Detective Earley drove to the address provided by the caller, because there were outstanding arrest warrants for Campbell.⁴

Detective Earley knocked on the door of the residence and a person from within asked who was knocking. After the detectives responded that they were police, Campbell peeked through a piece of aluminum foil covering the door window. Detective Earley recognized

¹ Ind. Code § 35-48-4-10.

² Ind. Code § 35-48-4-11(1).

³ Ind. Code § 35-50-1-10.

Campbell and ordered him to open the door. Campbell, instead, backed away from the door, prompting Detective Earley to force open the door. Campbell and Tarnisha Clay (“Clay”) were standing in the living room while Marlon Jackson (“Jackson”) was in the hallway. Upon seeing the detectives, Jackson went into a bedroom, slammed the door shut, and locked it. Detective Blackwell ordered Campbell to the ground and eventually placed him in handcuffs. Detective Earley went to the bedroom where Jackson was hiding, rapped on the door with his fist, and instructed Jackson to open the door. Once Jackson opened the door, he was escorted to the living room.

When Detective Earley returned to the living room, he noticed green plant material, consistent with marijuana, on the coffee table and in a grocery bag. Detective Earley then asked Clay if the marijuana belonged to her. Before Clay could respond, Campbell said, “It’s mine.” Trial Transcript at 79.

Detective Blackwell asked Jackson if they could search the rest of the residence, and Jackson signed a waiver to that effect. During the search, two boxes of sandwich bags, bags of tobacco shavings,⁵ four more bags of marijuana, a forty-five caliber semi-automatic machine gun, and a digital scale were discovered. Six hundred dollars in small denominations was found in Campbell’s pockets. In total, twelve smaller bags of marijuana were recovered in addition to five significantly larger bags. Over 170 grams of marijuana were recovered. Upon testing, the suspected substance in the bags found at the residence was

⁴ Detective Earley testified as to the outstanding arrest warrants at the motion to suppress hearing.

⁵ Officer Earley testified that it is a common practice for people who smoke marijuana to hollow out cigars and stuff the leftover wrapper with marijuana.

proven to be marijuana.

The State filed an amended information charging Campbell with Dealing in Marijuana, as a Class D felony, Possession of Marijuana, as a Class D felony, and being a Habitual Substance Offender. On February 15, 2006, Campbell filed a motion to suppress his statement claiming ownership of the marijuana. After a hearing, the trial court denied the motion. At the conclusion of the trial on February 17, 2006, the jury found Campbell guilty as charged. Campbell then pled guilty to being a Habitual Substance Offender. The trial court sentenced Campbell to eight years for Dealing in Marijuana (enhanced by the Habitual Substance Offender conviction) and three years for Possession of Marijuana, to be served concurrently. Campbell now appeals.

Discussion and Decision

I. Effective Assistance of Counsel

First, Campbell argues that his trial counsel was ineffective, because she did not file a motion to suppress, object to the admission of evidence gathered from the search of the residence, or object to Detective Earley's testimony concerning the entry and search of the residence. To prevail upon a claim of ineffective assistance of counsel, Campbell must present strong and convincing evidence to overcome the presumption that his representation by trial counsel was appropriate. DeWhitt v. State, 829 N.E.2d 1055, 1065 (Ind. Ct. App. 2005), reh'g denied. Campbell must show that his trial counsel's representation was both deficient, in that it fell below an objective standard of reasonableness, and that he was prejudiced by such deficiency so that he was denied a fair trial. Id. To establish prejudice,

Campbell must demonstrate that there is a reasonable probability that, but for the performance of his counsel, the result of the proceeding would have been different. Id.

Campbell attacks his trial counsel's performance in that she did not take steps to suppress the evidence recovered during the alleged illegal entry and search of the residence. Campbell argues that the sole reason the search of the residence was illegal was that Detectives Earley and Blackwell did not have a warrant or probable cause to enter the residence.

The Fourth Amendment to the United States Constitution provides all citizens with "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" U.S. CONST. AMEND. IV. For a search to be reasonable under the Fourth Amendment, a warrant is required unless an exception to the warrant requirement applies. State v. Lucas, 859 N.E.2d 1244, 1249 (Ind. Ct. App. 2007).

Contrary to Campbell's assertion that the police lacked a warrant, Detective Earley testified during the motion to suppress hearing⁶ that he arrested Campbell based on multiple outstanding arrest warrants. Based on the arrest warrants and the tip as to where Campbell could be located, Detective Earley drove to the address provided to determine if Campbell was present. When Detective Earley recognized Campbell through the door window, he had probable cause to enter the home to effectuate Campbell's arrest after Campbell refused to open the door. After the detectives secured the residence, the marijuana was found in plain view. Thus, the entry into the residence was not warrantless or without probable cause and

did not violate Campbell's Fourth Amendment rights. Because the search did not violate Campbell's Fourth Amendment rights, it was reasonable for Campbell's counsel to forgo challenging the admission of evidence resulting from the search. Campbell has not demonstrated that his representation by his trial counsel fell below an objective standard of reasonableness.

II. Admission of Statements

Second, Campbell contends that the trial court erred when it denied his motion to suppress his statement that the marijuana belonged to him. However, because Campbell did not seek an interlocutory appeal after the denial of his motion to suppress, the issue presented is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. Washington v. State, 784 N.E.2d 584, 586-87 (Ind. Ct. App. 2003).

A trial court has broad discretion in ruling on the admissibility of evidence. Id. at 587. Accordingly, we will only reverse a trial court's ruling on admissibility of evidence when the trial court has abused its discretion. Id. An abuse of discretion occurs when a trial court's decision is clearly against the logic and effect of the facts and the circumstances before the court. Id.

Campbell argues that when he made the incriminating statement, he had not been advised of the *Miranda* warnings and was subjected to custodial interrogation. The Fifth Amendment privilege against self-incrimination protects individuals from legal compulsion to testify in a criminal courtroom as well as informal compulsion exerted by law enforcement

⁶ The motion to suppress hearing pertained only to the incriminating statement Campbell made during his arrest.

officers during in-custody questioning. Curry v. State, 643 N.E.2d 963, 976 (Ind. Ct. App. 1994), reh'g denied, trans. denied. The special procedural safeguards delineated in Miranda v. Arizona, 384 U.S. 436 (1966), are required whenever a person is subjected to custodial interrogation, i.e. either express questions or its functional equivalent. Rhode Island v. Innis, 446 U.S. 291, 300-301 (1980). Under the Self-Incrimination Clause of the Fifth Amendment, only verbal statements preceding an advisement of *Miranda* rights that are both testimonial in nature and elicited during custodial interrogation must be suppressed. Curry, 643 N.E.2d at 976.

Both parties agree that Campbell was in custody at the time he made the statement and was not read the *Miranda* warnings, so our focus is on whether interrogation prompted Campbell's incriminating statement. Interrogation includes both express questioning of the defendant as well as words or actions on the part of police that the police should know are reasonably likely to elicit an incriminating response from the defendant. Furnish v. State, 779 N.E.2d 576, 579 (Ind. Ct. App. 2002), trans. denied. When we review an alleged interrogation based on words or actions on the part of police, we focus on the perceptions of the suspect, rather than the intent of the police. Innis, 446 U.S. at 301. "But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response." Id. (emphasis in original)

Campbell asserts that Detective Earley's action of questioning Clay about whether the

marijuana was hers while both Campbell and Jackson were present was intended to induce incriminating responses from the two men. However, Campbell does not explain why Detective Earley should have known this action of questioning Clay, as opposed to first questioning Campbell or Jackson, would induce incriminating responses from Campbell and Jackson. Without more, a police officer questioning one possible suspect as to the ownership of contraband does not rise to interrogation as to another suspect who is merely present in the same room. Rather, Campbell's statement claiming ownership of the marijuana was a voluntary statement. Volunteered statements do not amount to interrogation. White v. State, 772 N.E.2d 408, 412 (Ind. 2002). Therefore, the trial court did not abuse its discretion in permitting Campbell's voluntary incriminating statements to be admitted into evidence.⁷

Conclusion

Campbell has not shown ineffective assistance of trial counsel. The trial court did not abuse its discretion in allowing Campbell's incriminating statement into evidence, because it was a volunteered statement rather than a product of interrogation.

Affirmed.

SHARPNACK, J., and MAY, J., concur.

⁷ We would be remiss if we did not point out that the best practice in a situation such as this one would be to advise the defendant of the *Miranda* warnings when he is initially placed in custody. If the warnings had been read to Campbell at the point of his arrest, this issue would not be before us today.